

1 DONALD J. PUTTERMAN (SBN 90822)
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2 DANNIELLE M. CAMPBELL (SBN 303204)
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3 PUTTERMAN | YU LLP
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San Francisco CA 94104-2626
5 Tel: (415) 839-8779
6 Fax: (415) 737-1363

7 Attorneys for Defendant
SVP PARTNERS, LLC
8

9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

11 GEORGE AVALOS, and Individual,
12 Plaintiff,
13 v.
14 SVP PARTNERS, LLC, a California LLC,
15 Defendants.
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Case No. 1:20-cv-01381-DAD-EPG

**DECLARATION OF DANNIELLE M.
CAMPBELL IN SUPPORT OF
DEFENDANT SVP PARTNERS LLC'S
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT FOR IMPROPER
SERVICE PURSUANT TO F.R.C.P.
RULE 12(b)(5)**

Complaint Filed: September 30, 2020

Date: February 19, 2021
Time: 10:00 a.m.
Courtroom: 10

The Honorable Erica P. Grosjean Presiding

1 I, DANNIELLE M. CAMPBELL, declare:

2 1. I am an active member of good standing of the State Bar of California and an attorney
3 at the law firm of PUTTERMAN | YU LLP, attorneys for Defendant SVP Partners, LLC. I have
4 personal knowledge of the facts stated therein, and if required, could and would competently testify
5 thereto.

6 2. On December 30, 2020, I called and emailed Phyl Grace at Manning Law Office,
7 counsel for Plaintiff, to inform counsel that Plaintiff's service of the Complaint was defective, and I
8 requested that Plaintiff dismiss the Complaint. A true and correct copy of my email to Attorney Grace
9 dated December 30, 2020 is attached hereto as **Exhibit 1**. I further emailed Attorney Grace with a
10 copy of the Proof of Service of Summons filed (Docket Number 5), noting that the Proof of Service
11 also indicated that the Summons was not served with the Complaint and therefore service was
12 defective. A true and correct copy of my email to Attorney Grace dated December 30, 2020 is
13 attached hereto as **Exhibit 2**. I received no response to from Plaintiff's counsel.

14 3. Instead of addressing the defects in service, I received an email from Craig Cote at
15 Manning Law Office, introducing himself and informing me that Plaintiff intended to settle the
16 matter. Not Attorney Cote nor anyone from Manning Law Office addressed Plaintiff's defects in
17 service.

18 I declare the foregoing to be true and correct under the penalty of perjury of the laws of
19 California. Executed on January 22, 2021 in San Francisco, CA.

20 /s/ Danielle M. Campbell
21 Danielle M. Campbell
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Exhibit 1

Exhibit 1
Case No. 1:20-cv-01381-DAD-EPG

From: [Dannielle M. Campbell](#)
To: pgrace@manninglawoffice.com
Cc: [Donald Putterman](#); [Celeste Bucciarelli](#)
Subject: Avalos v. SVP Partners LLC, Eastern District of California Case No. 1:20-cv-01381-DAD-EPG
Date: Wednesday, December 30, 2020 2:29:00 PM

Dear Ms. Grace,

This note follows a voice message left with your office voicemail system a moment ago. We represent SVP Partners LLC in the subject lawsuit filed by your client Mr. George Avalos in the Eastern District of California. We are in receipt of a Minute Order from Magistrate Erica Grosjean continuing a hearing to January 15, 2021 at 10:00 AM on your client's motion for default judgment against our clients.

Please note service of the complaint is defective because it failed to include a summons, and the entire action can be dismissed on grounds of improper service. We request your client withdraw the motion for default immediately and allow our clients until January 30, 2021 to respond or we will have to bring a motion to dismiss under Rule 12(b)(5). Please confirm your client has withdrawn the default no later than **December 31, 2020 by 5:00 PM**.

We appreciate your attention to this matter.

[Dannielle M. Campbell](#)
Of Counsel
Putterman | Yu LLP
345 California St. | Suite 1160
San Francisco, CA 94104
dcampbell@plylaw.com
Tel. 415.839.8779 | Direct. 415.598.2870 | Fax. 415.737.1363

Exhibit 2

Exhibit 2
Case No. 1:20-cv-01381-DAD-EPG

From: [Dannielle M. Campbell](#)
To: pgrace@manninglawoffice.com
Cc: [Donald Putterman](#); [Celeste Bucciarelli](#)
Subject: RE: Avalos v. SVP Partners LLC, Eastern District of California Case No. 1:20-cv-01381-DAD-EPG
Date: Wednesday, December 30, 2020 2:56:00 PM
Attachments: [2020_1020 POS of Summons - SVP Partners.pdf](#)

For your reference, attached is the Proof of Service of Summons we pulled from PACER, which shows the summons was not served with the complaint because the box for summons is not checked. Thank you.

Sincerely,

[Dannielle M. Campbell](#)
Of Counsel
Putterman | Yu LLP
345 California St. | Suite 1160
San Francisco, CA 94104
dcampbell@plylaw.com
Tel. 415.839.8779 | Direct. 415.598.2870 | Fax. 415.737.1363

From: Dannielle M. Campbell
Sent: Wednesday, December 30, 2020 2:30 PM
To: pgrace@manninglawoffice.com
Cc: Donald Putterman <dputterman@plylaw.com>; Celeste Bucciarelli <cbucciarelli@plylaw.com>
Subject: Avalos v. SVP Partners LLC, Eastern District of California Case No. 1:20-cv-01381-DAD-EPG

Dear Ms. Grace,

This note follows a voice message left with your office voicemail system a moment ago. We represent SVP Partners LLC in the subject lawsuit filed by your client Mr. George Avalos in the Eastern District of California. We are in receipt of a Minute Order from Magistrate Erica Grosjean continuing a hearing to January 15, 2021 at 10:00 AM on your client's motion for default judgment against our clients.

Please note service of the complaint is defective because it failed to include a summons, and the entire action can be dismissed on grounds of improper service. We request your client withdraw the motion for default immediately and allow our clients until January 30, 2021 to respond or we will have to bring a motion to dismiss under Rule 12(b)(5). Please confirm your client has withdrawn the default no later than **December 31, 2020 by 5:00 PM**.

We appreciate your attention to this matter.

[Dannielle M. Campbell](#)
Of Counsel
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345 California St. | Suite 1160
San Francisco, CA 94104

dcampbell@plylaw.com

Tel. 415.839.8779 | Direct. 415.598.2870 | Fax. 415.737.1363

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Joseph R Manning Jr Esq SBN 223381 MANNING LAW APC 20062 SW Birch St #200 Newport Beach, CA 92660 TELEPHONE NO.: 949-200-8755 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff George Avalos, an individual		FOR COURT USE ONLY
STREET ADDRESS: MAILING ADDRESS: UNITED STATES DISTRICT COURT CITY AND ZIP CODE: BRANCH NAME: EASTERN DISTRICT OF CALIFORNIA		
PLAINTIFF/PETITIONER: George Avalos an individual DEFENDANT/RESPONDENT: SVP Partners LLC, a California limited liability company		CASE NUMBER: 1:20 cv 01381 - DAD-EPG
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.: ADAA-032.215

(Separate proof of service is required for each party served.)

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of:
 - ☐ summons
 - ☒ complaint
 - ☐ Alternative Dispute Resolution (ADR) package
 - ☒ Civil Case Cover Sheet (served in complex cases only)
 - ☐ cross-complaint
 - ☒ other (specify documents): Standing Order, Standing Order in Light of Ongoing Judicial Emergency in the Eastern District of California, Magistrate Judge Consent in Civil Cases, Notice of Availability Voluntary Dispute Resolution, Order Setting Mandatory Scheduling Conference
- Party served (specify name of party as shown on documents served):
SVP Partners LLC, a California limited liability company
 - ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Nicole Stauss -clerk of CSC Lawyers Inc- Agent for Service
- Address where the party was served:
2710 Gateway Oaks Dr, Ste 150N Sacramento, CA 95833
- I served the party (check proper box)
 - ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 10/14/2020 (2) at (time): 12:50 PM
 - ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
 - ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: George Avalos an individual	CASE NUMBER
DEFENDANT/RESPONDENT: SVP Partners LLC, a California limited liability company	1:20 cv 01381 - DAD-EPG

5. c. ☐ **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): _____ (2) from (city): _____
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ **by other means** (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify): _____
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): SVP Partners LLC, a California limited liability company

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input checked="" type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input checked="" type="checkbox"/> other: 17001 UNP code LLC |

7. **Person who served papers**

- a. Name: John E Arnold
- b. Address: 2390 E Orangewood Ave #530, Anaheim, CA 92806
- c. Telephone number: 949-305-9108
- d. The fee for service was: \$ 59
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ a registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor.
- (ii) Registration No.: 2015-39
- (iii) County: Sacramento

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

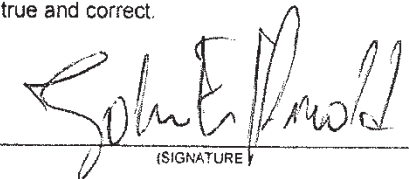
or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 10/16/2020

John E Arnold

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


(SIGNATURE)